

ATTACHMENT B

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1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEVADA

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 WALKER RIVER PAIUTE TRIBE,

6 Plaintiff-Intervenor,

7 vs.

8 WALKER RIVER IRRIGATION DISTRICT,
9 a corporation, et al.,

10 Defendants.

11 MINERAL COUNTY,

12 Proposed-Plaintiff-Intervenor

13 vs.

14 WALKER RIVER IRRIGATION DISTRICT
15 a corporation, et al.

16 Proposed Defendants.
17

IN EQUITY NO. C-125-ECR
Subproceeding: C-125-C
3:73-CV-00128-ECR-RAM

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19
20 **PROPOSED FORM OF JOINT**
21 **MOTION FOR SUBSTITUTION**
22 **OF PARTIES FOLLOWING**
23 **TRANSFER OF INTEREST AND**
24 **REQUEST FOR HEARING**

25 The following motion is filed pursuant to Fed. R. Civ. P. 25(c) and this Court's *Order*
26 *Concerning Service Issues Pertaining to Defendants Who Have Been Served* (#) and is
27 filed jointly by _____, who is a current
28 Defendant in this action based on the ownership of one or more water rights under the Walker
River Decree ("Transferor/Current Counter-Defendant") and has conveyed or otherwise
transferred one or more of these water rights to
_____ ("Transferee/Proposed Counter-
Defendant").

1 By this motion, the Transferor/Current Counter-Defendant and Transferee/Proposed
2 Counter-Defendant ask the Court to substitute the Transferee/Proposed Counter-Defendant into
3 this action in place of the Transferor/Current Counter-Defendant regarding the specific water
4 right(s) identified herein. The parties to this motion request a hearing on this motion if any
5 objections are filed to this motion. If there are no objections, the parties to this motion consent to
6 the Court entering an Order of Substitution without a hearing.

7 **I. Identification of Transferor/Current Counter-Defendant:**

8 The undersigned Transferor/Current Counter-Defendant in the above action hereby
9 notifies the Court and Mineral County that the undersigned (or the entity on whose behalf I am
10 acting) has sold or otherwise conveyed ownership of all or a portion of a water right or rights
11 under the Walker River Decree to the Transferee/Proposed Counter-Defendant and provides the
12 following information:

13 A. The name and address of the Transferor/Current Counter-Defendant who sold or
14 otherwise conveyed ownership:

15 Name(s):
16 Street or P.O. Box:
17 Town or City:
18 State:
19 ZipCode:
20 Telephone Number:
21 E-mail Address:

22 B. Attorney Representation:

- 23 ☐ Check here if the Transferor/Current Counter-Defendant is not represented
24 by counsel in this subproceeding.
25 ☐ Check here if the Transferor/Current Counter-Defendant is represented by
26 counsel in this subproceeding.
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1 If the Transferor/Current Counter-Defendant is represented by counsel in this
2 subproceeding, that attorney is identified below, along with his or her mailing address, telephone
3 number, facsimile number, and e-mail address:

4 Attorney:

5 Address:

6 Telephone Number:

7 Fax Number:

8 E-mail Address:

9 **II. Identification of Transferee/Proposed Counter-Defendant:**

10 The undersigned Transferee/Proposed Counter-Defendant in the above action hereby
11 notifies the Court and Mineral County that the undersigned (or the entity on whose behalf I am
12 acting) has acquired ownership of all or a portion of a water right or rights under the Walker
13 River Decree from the Transferor/Current Counter-Defendant and provides the following
14 information:

15 A. The name and address of the Transferee/Proposed Current Counter-Defendant who
16 acquired the water right or rights at issue in this motion:

17 Name(s):

18 Street or P.O. Box:

19 Town or City:

20 State:

21 ZipCode:

22 Telephone Number:

23 E-mail Address:

24 B. Attorney Representation:

25 ☐ Check here if the Transferee/Proposed Counter-Defendant is not
26 represented by counsel in this subproceeding.

27 ☐ Check here if the Transferee/Proposed Counter-Defendant is represented
28 by counsel in this subproceeding.

If the Transferee/Proposed Counter-Defendant is represented by counsel in this

proceeding, that attorney is identified below, along with his or her mailing address, telephone number, facsimile number, and e-mail address:

Attorney:

Address:

Telephone Number:

Fax Number:

E-mail Address:

III. Identification of the Water Right(s) Addressed in this Motion:

A. This motion addresses the following water right(s) that the Transferor/Current Counter-Defendant has transferred or otherwise conveyed to the Transferee/Proposed Counter-Defendant:

B. Attached to and included with this motion are true and correct copies of all documents by which the change in ownership addressed in this motion was accomplished (check all appropriate boxes):

- ☐ Deed(s)
- ☐ Court Order(s)
- ☐ Other Document(s)

IV. Request for Substitution:

A. By this filing, the Transferor/Current Defendant requests that that the Transferee/Proposed Defendant be substituted into this action as the Counter-Defendant in regard to the water right(s) identified in Section III.A.

B. By this filing, the Transferee/Proposed Defendant agrees to be substituted into this action as the Counter-Defendant in regard to the water right(s) identified in Section III.A.

C. The undersigned Transferor/Current Defendant and Transferee/Proposed Defendant acknowledge that any person or entity who files a Motion for Substitution of Successor-in-Interest Defendant in this matter is ultimately responsible for the accuracy of this filing. Consequently, the undersigned Transferor/Current Defendant and Transferee/Proposed Defendant acknowledge that any defendant who files such a motion,

1 but, in fact, retains the water rights addressed in this motion, shall nevertheless be bound
2 by the results of this litigation.

3 D. Following the conveyance or transfer identified above, does the Transferee/Proposed
4 Defendant retain any water right or portion of a water right under the Walker River
5 Decree, including any rights not identified in Section III?

6 ☐ No. Subsequent to the conveyance/transfer identified in this motion,
7 I/we/entity do not own any other water rights under the Walker River
8 Decree. As a result, I/we/entity submit that the Court may dismiss the
9 Transferor/Current Counter-Defendant from this subproceeding because
10 I/we/entity no longer own any water rights that are subject to this
11 subproceeding.

12 ☐ Yes. Subsequent to the conveyance/transfer identified in this motion,
13 I/we/entity own other water rights under the Walker River Decree. As a
14 result, the Transferor/Current Counter-Defendant remains a Counter-
15 Defendant in this subproceeding based on the ownership of other water
16 rights that are subject to this subproceeding.

17 **V. Waiver of Service pursuant to Fed. R. Civ. P. 4:**

18 This Section applies to any Transferee/Proposed Defendant who is not already a Counter-
19 Defendant in this case based on its ownership of other water rights. By its signature to this
20 motion, the Transferee/Proposed Defendant:

21 A. Acknowledges that I/we/entity (or the entity on whose behalf I am acting) have been
22 made aware of the fact that the water right(s) described in Section III above are subject to
23 this subproceeding, which is entitled United States v. Walker River Irrigation District,
24 and which is docket number In Equity C-125, Subfile C-125-C, in the United States
25 District Court for the District of Nevada, and that I am bound by all Orders in this
26 subproceeding;

27 B. Acknowledges that I/we/entity (or the entity on whose behalf I am acting) need not be
28 served separately or personally, pursuant to Fed. R. Civ. P. 4, with a Notice in Lieu of
Summons, the instant motion or any other previous filing in this subproceeding;

1 C. Acknowledges that I/we/entity (or the entity on whose behalf I am acting) may file a
2 NOTICE OF APPEARANCE AND INTENT TO PARTICIPATE in the Court at the
3 address indicated in Section VII, below; and

4 D. Acknowledges that I/we/entity (or the entity on whose behalf I am acting) will retain all
5 defenses or objections to the lawsuit or to the jurisdiction or venue of the Court, except
6 for objections based on a defect in service pursuant to Fed. R. Civ. P. 25(c) regarding this
7 motion.

8 **VI. Certifications and Acknowledgements:**

9 By this filing, the Transferor/Current Counter-Defendant and Transferee/Proposed
10 Counter-Defendant acknowledge that:

11 A. Federal Rule of Civil Procedure 25(c) governs the substitution of successors-in-interest
12 that are the result of a transfers, other than those resulting from the death of a defendant,
13 and provides in relevant part that “[i]f an interest is transferred, the action may be
14 continued by or against the original party unless the court, on motion, orders the
15 transferee to be substituted in the action or joined with the original party....”;

16 B. Rule 25(c) does not require that anything be done after an interest is transferred, which
17 means that the action may be continued by or against the original party, and the judgment
18 will be binding on his successor-in-interest even though the successor-in-interest is not
19 named;

20 C. Absent the filing of this or a similar motion, this action would continue in the name of the
21 Transferor/Current Counter-Defendant, but would nevertheless bind the
22 Transferee/Proposed Counter-Defendant and any future successors-in-interest to the
23 results of the litigation;

24 D. Other parties to the case, acting pursuant to the Federal Rules of Civil Procedure, may
25 wish to file their position(s) regarding the merits of this motion, and may support, oppose
26 or take no position on the merits of this motion;

27 E. Following the filing of this motion, the action will continue in the name of the
28 Transferor/Current Counter-Defendant for the water right(s) identified herein until such
time as the Court approves the substitution requested herein. While substitution does not
automatically dismiss a Transferor/Current Counter-Defendant from this subproceeding,

1 the Court may dismiss the Transferor/Current Counter-Defendant if that Defendant no
2 longer has any water rights subject to this proceeding.

3 **VII. Filing and Service of this Motion:**

4 The Transferor/Current Defendant and Transferee/Proposed Defendant have filed this
5 motion in the above action with the:

6 Chief Deputy Clerk
7 United States District Court for the
8 District of Nevada
9 400 South Virginia Street, Suite 301
10 Reno, Nevada 89501

11 and served a copy of this motion on:

12 Simeon Herskovits
13 P.O. Box 1075
14 El Prado, New Mexico 87529
15 *Attorney for Mineral County*

16 PLEASE NOTE: Attorneys are reminded that they are required to comply with the electronic
17 filing procedures of the U.S. District Court for District of Nevada.

18 “Attorneys who are admitted to the bar of this court, admitted to participate in a case pro hac
19 vice, or who are authorized to represent the United States and its agencies, shall register as Filing
20 Users of the System. Registration shall be in the form prescribed by the Clerk of the Court and
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by these Electronic Filing Procedures.” U.S. Dist. Ct., D. Nev., Electronic Filing Procedures
(rev. Aug. 24, 2006) at I.C.

Signature of Transferor/Current Counter-Defendant:

(Signature) (Printed or typed Name)

Entity, if any, on whose behalf you are appearing: _____

The forgoing instrument was signed before me this ____ day of _____, 20__ by

State of _____

County of _____

Signature of Notary

My Commission Expires:

Signature of Transferee/Proposed Counter-Defendant:

(Signature) (Printed or typed Name)

Entity, if any, on whose behalf you are appearing: _____

The forgoing instrument was signed before me this ____ day of _____, 20__ by

State of _____

County of _____

Signature of Notary

My Commission Expires: